
HOUSE BILL No. 1564

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2-83.

Synopsis: IURC jurisdiction over mergers. Provides that, except in the case of rural electric membership corporations and certain nonprofit corporations, the following transactions require approval by the Indiana utility regulatory commission (IURC) after a hearing: (1) The reorganization of a public utility. (2) A transaction in which a public utility acquires control of another public utility, an out-of-state utility company, or a holding company. (3) A transaction in which a person acquires control of a public utility or the holding company of a public utility. (4) A transaction in which a holding company that controls at least one public utility acquires control of an out-of-state utility company.

Effective: July 1, 2003.

Moses, Pierce

January 16, 2003, read first time and referred to Committee on Commerce and Economic Development.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1564

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-83 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2003]: Sec. 83. (a) ~~No~~ **This section does not**
3 **apply to:**

- 4 (1) **a corporation organized or operating under IC 8-1-13; or**
5 (2) **a corporation organized under IC 23-17, some of the**
6 **members of which are local district corporations (as defined**
7 **in IC 8-1-13-23(b)).**

8 (b) **As used in this section, "control" means the power to direct**
9 **the management and policies of a public utility, utility company, or**
10 **holding company through:**

- 11 (1) **the ownership of voting securities or stock;**
12 (2) **the terms of a contract; or**
13 (3) **other means.**

14 **The term does not include power from holding an official position**
15 **or corporate office with the public utility, utility company, or**
16 **holding company. Control is presumed to exist if a person, directly**
17 **or indirectly, owns, controls, has the power to vote, or has the**



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power to vote proxies that constitute at least twenty percent (20%) of the total voting power of the public utility, utility company, or holding company.

(c) As used in this section, unless otherwise indicated, "holding company" means a company that has control over one (1) or more:

- (1) public utilities; or
- (2) utility companies.

(d) As used in this section, "person" means an individual, a firm, a corporation, a company, a partnership, a limited liability company, an association, a trustee, a lessee, or a receiver.

(e) As used in this section, "reorganization" means a transaction that, regardless of the means by which it is accomplished, results in:

- (1) a change in the ownership of a majority of the voting capital stock of a public utility;
- (2) a change in the ownership or control of an entity that owns or controls a majority of the voting capital stock of a public utility;
- (3) the merger of two (2) public utilities; or
- (4) the acquisition by one (1) public utility of substantially all assets of another public utility.

(f) As used in this section, "utility company" has the same meaning as the definition of public utility under section 1 of this chapter, except that a utility company owns, operates, manages, or controls a plant or equipment located outside Indiana.

(g) A public utility, as defined in section 1 of this chapter, ~~shall~~ **may not do any of the following without the approval of the commission after a hearing:**

- (1) Sell, assign, transfer, lease, or encumber its **stock**, franchise, works, or system to any other person, partnership, limited liability company, or corporation. ~~or~~
- (2) Contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation. ~~without the approval of the commission after hearing.~~
- ~~And no such~~
- (3) Contract for or effect a reorganization of the public utility.
- (4) Acquire control, directly or indirectly, of a public utility, utility company, or holding company.

(h) A person may not acquire control, directly or indirectly, of a public utility or the holding company of a public utility without the approval of the commission after a hearing.

(i) A holding company that controls at least one (1) public utility

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1 **may not acquire control of a utility company without the approval**
 2 **of the commission after a hearing.**

3 **(j)** A public utility, except temporarily or in case of emergency and
 4 for a period of not exceeding thirty (30) days, ~~shall~~ **may not** make any
 5 special contract at rates other than those prescribed in its schedule of
 6 rates theretofore filed with the commission, and in force, with any other
 7 utility for rendering any service to or procuring any service from such
 8 other utility; without the approval of the commission. It shall be lawful,
 9 however, for any utility to make a contract for service to or from
 10 another utility at rates previously filed with and approved by the
 11 commission and in force.

12 ~~(b)~~ **(k)** The approval of the commission of the sale, assignment,
 13 transfer, lease, or encumbrance of a franchise or any part thereof under
 14 this section shall not revive or validate any lapsed or invalid franchise,
 15 or enlarge or add to the powers and privileges contained in the grant of
 16 any franchise or waive any forfeiture. ~~No such~~ **A** public utility ~~shall~~
 17 **may not** directly or indirectly purchase, acquire, or become the owner
 18 of any of the property, stock, or bonds of any other public utility
 19 authorized to engage or engaged in the same or a similar business, or
 20 operating or purporting to operate under a franchise from the same or
 21 any other municipality or under an indeterminate permit unless
 22 authorized so to do by the commission.

23 ~~(c)~~ **(l)** Nothing contained in this section shall prevent the holding of
 24 stock lawfully acquired before May 1, 1913, or prohibit, upon the
 25 surrender or exchange of said stock pursuant to a reorganization plan,
 26 the purchase, acquisition, taking, or holding by the owner of a
 27 proportionate amount of the stock of any new corporation organized to
 28 take over at foreclosure or other sale, the property of the corporation
 29 whose stock has been thus surrendered or exchanged.

30 ~~(d)~~ **Every (m)** A contract by ~~any~~ **a** public utility for the purchase,
 31 acquisition, assignment, or transfer to it of any of the stock of any other
 32 public utility by or through any person, partnership, limited liability
 33 company, or corporation without the approval of the commission shall
 34 be void and of no effect, and no such transfer or assignment of such
 35 stock upon the books of the corporation pursuant to any such contract
 36 shall be effective for any purpose.

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